

REMARKS

Claims 38, 71, and 73 are cancelled. The Specification is also amended to include a cross reference to related application section. A petition for the benefit of the prior-filed provisional applications as required by 37 CFR 1.78 (a)(6) is concurrently filed. Claims 29, 31, 32, 34, 36, 37, 39, 40, 70, 72 and 75-77 are pending.

Specification

The Specification is amended to include a cross reference to related application section. A petition for the benefit of a prior-filed provisional application as required by 37 CFR 1.78 (a)(6) is concurrently filed.

Claim Objections

Claim 37 stands objected to as being identified as “currently amended”. This designation in the previous amendment was made in error. The current list of claims identifies claim 37 as “previously presented.”

Claims 38, 71, and 73 stand objected to as failing to further limit the subject matter of a previous claim. In response, those claims are cancelled.

Claim Rejections -35 USC 103

Claims 29, 31, 32, 34, 36, 37, 39, 40, 70, 72, 75-77 stand rejected under 35 USC 103 as being unpatentable over Carson et al (US 5,830,877), or Mathiowitz et al (US 6,677,313) and Kabanov et al (5,656,611), further in view of Kabanov et al (6,387,406), for reasons of record.

The Applicants submit that Kabanov et al. '406 is disqualified as prior art under 35 U.S.C. 103(c). The '406 patent, which was identified as prior art under 102(e) in the March 23, 2004 Office Action, and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person, Supratek Pharma, Inc.

While the Applicants dispute that the claimed invention is obvious over the recited combination of references, the rejection is now moot. The pending obviousness rejection clearly

required the teaching of the '406 patent as an necessary part of the combination of references. The Office Action relied on the '406 patent to teach formulations for both polypeptide and nucleic acid. The Office Action additionally relied on the '406 patent for teaching the effects on solution behavior when combining two hydrophilic Pluronic copolymers. As the '406 patent is disqualified as a reference, removal of the obviousness rejection is requested.

Obviousness-Type Double Patenting Rejection

Claims 29, 31, 32, 34, 36, 37, 39, 40, 70, 72, 75-77 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2, 3, 13, 18, 21, and 23 of U.S. Patent No. 6,359,054. A terminal disclaimer compliant with 37 CFR 3.73(b) is attached hereto. Therefore removal of the rejection is requested.

In view of the foregoing, Applicants submit that all pending claims are in condition for allowance and request that all claims be allowed. The Examiner is invited to contact the undersigned should she believe that this would expedite prosecution of this application. It is believed that no fee is required. The Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 13-2165.

Respectfully submitted,

Dated: March 15, 2006



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